

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Jerald A. Hammann	Examiner:	Robert D. Rines
Serial No.:	09/840,332	Group Art Unit:	3623
Filed:	April 23, 2001	Docket No.:	H238.101.101
Title:	SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY		

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief – Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed on September 20, 2010, appealing the final rejection of claims 31-40 of the above-identified application as set forth in the Final Office Action mailed June 18, 2010.

The U.S. Patent and Trademark Office is hereby authorized to charge Deposit Account No. 50-0471 in the amount of \$270.00 for filing a Brief in Support of an Appeal as set forth under 37 C.F.R. § 41.20(b)(2). At any time during the pendency of this application, please charge any required fees or credit any overpayment to Deposit Account No. 50-0471.

Appellant respectfully requests consideration and reversal of the Examiner's rejection of pending claims 31-40.

Appeal Brief to the Board of Patent Appeals and Interferences

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Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-
FACTOR RESOURCE INDUSTRY

TABLE OF CONTENTS

Real Party in Interest.....	3
Related Appeals and Interferences.....	3
Status of Claims	3
Status of Amendments	3
Summary of the Claimed Subject Matter.....	3
Grounds of Rejection to be Reviewed on Appeal.....	15
Argument	15
Conclusion	28
Claims Appendix	29
Evidence Appendix.....	37
Related Proceedings Appendix.....	38

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

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Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

REAL PARTY IN INTEREST

The intellectual property embodied in the pending application is assigned to GoalAssist Corporation having a principal place of business at 17400 Evener Way, Eden Prairie, MN 55346 (hereinafter "GoalAssist").

RELATED APPEALS AND INTERFERENCES

There is an Appeal Brief being filed concurrently in co-pending Serial No. 09/999,378. There is a double patenting rejection of claims 31, 32, 33, 34, 35, and 36-40 over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378.

STATUS OF CLAIMS

In a Final Office Action mailed June 18, 2010, claims 31-40 were finally rejected. Claims 31-40 are pending in the application. Claims 1-30 have been cancelled. No claims have been withdrawn, allowed, objected to, or restricted. Claims 31-40 are the subject of the present Appeal.

STATUS OF AMENDMENTS

No amendments have been entered subsequent to the Final Office Action mailed June 18, 2010.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The Summary is set forth as exemplary embodiments corresponding to the language of independent claims 31, 32, 33, 34, and 35, and dependent claim 39. Discussions about elements of claims 31, 32, 33, 34, 35, and 39 can be found at least at the cited locations in the specification and drawings.

One embodiment of the present invention, as claimed in independent claim 31, is a computer-based method for capacity/demand management in human factor resource industries, comprising:

accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location (see e.g., Present Specification at page 17 lines 15-24, and Figure 1; Present Specification at page 55

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

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Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

lines 20-30, page 56, lines 1-2), a service date and a service time (see e.g., Present Specification at page 4 lines 16-26, page 8 lines 6-20, page 10 lines 29-30, page 11 lines 1-6, page 15 lines 5-9, page 18 lines 22-30, page 19 lines 1-18, page 21 lines 9-30, page 22 lines 1-11, page 27 lines 16-25, page 51 line 6 through page 57 line 12 and Figures 1, 3 and 5);

accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value (see e.g., Present Specification at page 21 lines 9-30, page 22 lines 1-11, page 25 lines 17-30, page 26 lines 1-3 and Figure 3);

communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value (see e.g., Present Specification at page 9 lines 12-30, page 10 lines 1-20, page 18 lines 22-30, page 19 lines 1-18, page 55 lines 20-30, page 56 lines 1-21);

modifying, in response to the communication; at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one composite resource (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 38 line 8 through page 49 line 23, page 51 lines 6-30 and page 52 lines 1-9 (various examples which decrease demand for or increase capacity of composite resources) and Figures 9-18);

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available (see e.g., Present Specification at page 51 line 20 through page 57 line 12);

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource is a human resource (see e.g., Present Specification at page 6 lines 1-24);

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (see e.g., Present Specification at page 3 line 26 through page 6 line 24);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user (see e.g., Present Specification at page 15 lines 5-9, page 20 lines 1-18, page 27 lines 16-25, page 55 lines 20-30, page 56 lines 1-2);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time (see e.g., Present Specification at page 20 lines 1-18, page 29 lines 18-30, page 31 lines 10-21, page 34 lines 14-30, page 35 lines 1-23);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability (see e.g., Present Specification at page 3 line 18 to page 7 line 5 (discussing distinguishing characteristics, with examples)); and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period (see e.g., Present Specification at page 15 lines 5-9, page 38 line 9 through page 41 line 8).

One embodiment of the present invention, as claimed in independent claim 32, is a computer-based capacity/demand management system in human factor resource industries, comprising:

means for accepting transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location (see e.g., Present Specification at page 17 lines 15-24, and Figure 1; Present Specification at page 55 lines 20-

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

30, page 56, lines 1-2), a service date and a service time (see e.g., Present Specification at page 4 lines 16-26, page 8 lines 6-20, page 10 lines 29-30, page 11 lines 1-6, page 15 lines 5-9, page 18 lines 22-30, page 19 lines 1-18, page 21 lines 9-30, page 22 lines 1-11, page 27 lines 16-25, page 51 line 6 through page 57 line 12 and Figures 1, 3 and 5);

means for accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value (see e.g., Present Specification at page 21 lines 9-30, page 22 lines 1-11, page 25 lines 17-30, page 26 lines 1-3 and Figure 3);

means for communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value (see e.g., Present Specification at page 9 lines 12-30, page 10 lines 1-20, page 18 lines 22-30, page 19 lines 1-18, page 55 lines 20-30, page 56 lines 1-21);

means for modifying, in response to the communication; at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the means for modifying increases the demand for and/or decreases the capacity of the at least one composite resource (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 38 line 8 through page 49 line 23, page 51 lines 6-30 and page 52 lines 1-9 (various examples which decrease demand for or increase capacity of composite resources) and Figures 9-18);

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available (see e.g., Present Specification at page 51 line 20 through page 57 line 12);

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (see e.g., Present Specification at page 6 lines 1-24);

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the at least one service provider resource is a human resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (see e.g., Present Specification at page 3 line 26 through page 6 line 24);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user (see e.g., Present Specification at page 15 lines 5-9, page 20 lines 1-18, page 27 lines 16-25, page 55 lines 20-30, page 56 lines 1-2);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time (see e.g., Present Specification at page 20 lines 1-18, page 29 lines 18-30, page 31 lines 10-21, page 34 lines 14-30, page 35 lines 1-23);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability (see e.g., Present Specification at page 3 line 18 to page 7 line 5 (discussing distinguishing characteristics, with examples)); and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period (see e.g., Present Specification at page 15 lines 5-9, page 38 line 9 through page 41 line 8).

One embodiment of the present invention, as claimed in independent claim 33, is a capacity/demand management system comprising:

a storage device storing a program; and

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

at least one processor connected to the storage device and controlled by the program, the at least one processor operative with the program to accept transaction parameter values for composite resources in human factor resources industries, wherein each composite resource has associated therewith at least a service location (see e.g., Present Specification at page 17 lines 15-24, and Figure 1; Present Specification at page 55 lines 20-30, page 56, lines 1-2), a service date and a service time (see e.g., Present Specification at page 4 lines 16-26, page 8 lines 6-20, page 10 lines 29-30, page 11 lines 1-6, page 15 lines 5-9, page 18 lines 22-30, page 19 lines 1-18, page 21 lines 9-30, page 22 lines 1-11, page 27 lines 16-25, page 51 line 6 through page 57 line 12 and Figures 1, 3 and 5), to accept from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value (see e.g., Present Specification at page 21 lines 9-30, page 22 lines 1-11, page 25 lines 17-30, page 26 lines 1-3 and Figure 3), to communicate to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value (see e.g., Present Specification at page 9 lines 12-30, page 10 lines 1-20, page 18 lines 22-30, page 19 lines 1-18, page 55 lines 20-30, page 56 lines 1-21), and to modify in response to the communication at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying increases the demand for and/or decrease the capacity of the at least one composite resource (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 38 line 8 through page 49 line 23, page 51 lines 6-30 and page 52 lines 1-9 (various examples which decrease demand for or increase capacity of composite resources) and Figures 9-18);

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available (see e.g., Present Specification at page 51 line 20 through page 57 line 12);

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource is a human resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (see e.g., Present Specification at page 3 line 26 through page 6 line 24);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user (see e.g., Present Specification at page 15 lines 5-9, page 20 lines 1-18, page 27 lines 16-25, page 55 lines 20-30, page 56 lines 1-2);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time (see e.g., Present Specification at page 20 lines 1-18, page 29 lines 18-30, page 31 lines 10-21, page 34 lines 14-30, page 35 lines 1-23);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability (see e.g., Present Specification at page 3 line 18 to page 7 line 5 (discussing distinguishing characteristics, with examples)); and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period (see e.g., Present Specification at page 15 lines 5-9, page 38 line 9 through page 41 line 8).

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

One embodiment of the present invention, as claimed in independent claim 34, is a computer-readable medium containing program instructions for controlling a computer to perform a method comprising:

accepting transaction parameter values related to individual resources and associated composite resources, wherein the associated composite resources each include a collection of at least two of the individual resources, wherein the associated composite resources each have associated therewith at least a service location (see e.g., Present Specification at page 17 lines 15-24, and Figure 1; Present Specification at page 55 lines 20-30, page 56, lines 1-2), a service date and a service time (see e.g., Present Specification at page 4 lines 16-26, page 8 lines 6-20, page 10 lines 29-30, page 11 lines 1-6, page 15 lines 5-9, page 18 lines 22-30, page 19 lines 1-18, page 21 lines 9-30, page 22 lines 1-11, page 27 lines 16-25, page 51 line 6 through page 57 line 12 and Figures 1, 3 and 5);

storing the data related to the individual resources and the associated composite resources (see e.g., Present Specification at page 16 lines 21-30, page 19 lines 6-7);

constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources (see e.g., Present Specification at page 29 lines 21-24);

indicating when a capacity of a composite resource exceeds a demand for the composite resource (see e.g., Present Specification at page 29 lines 21-24, page 60 lines 25-26);

modifying, in response to the indicating of the capacity of a composite resource exceeding the demand for the composite resource, at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, the modifying including increasing the demand for the composite resource and/or decreasing the capacity of the composite resource (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 38 line 8 through page 49 line 23, page 51 lines 6-30 and page 52 lines 1-9 (various examples which decrease demand for or increase capacity of composite resources) and Figures 9-18);

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available (see e.g., Present Specification at page 51 line 20 through page 57 line 12);

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource is a human resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (see e.g., Present Specification at page 3 line 26 through page 6 line 24);

wherein the indication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user (see e.g., Present Specification at page 15 lines 5-9, page 20 lines 1-18, page 27 lines 16-25, page 55 lines 20-30, page 56 lines 1-2);

wherein the capacity of a composite resource is a measure of the on-hand supply and/or availability, if applicable, of the composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the composite resource over a first date and time period beginning at the first date and time and ending at a second date and time (see e.g., Present Specification at page 20 lines 1-18, page 29 lines 18-30, page 31 lines 10-21, page 34 lines 14-30, page 35 lines 1-23);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability (see e.g., Present Specification at page 3 line 18 to page 7 line 5 (discussing distinguishing characteristics, with examples)); and,

wherein the demand for a composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the composite resource over the first date and time period (see e.g., Present Specification at page 15 lines 5-9, page 38 line 9 through page 41 line 8).

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

One embodiment of the present invention, as claimed in independent claim 35, is a computer-based method for producing composite resource transactions, the method comprising:

accepting, via computer, transaction parameter values for composite resources in human factor resource industries, wherein each composite resource has associated therewith at least a service location (see e.g., Present Specification at page 17 lines 15-24, and Figure 1; Present Specification at page 55 lines 20-30, page 56, lines 1-2), a service date and a service time (see e.g., Present Specification at page 4 lines 16-26, page 8 lines 6-20, page 10 lines 29-30, page 11 lines 1-6, page 15 lines 5-9, page 18 lines 22-30, page 19 lines 1-18, page 21 lines 9-30, page 22 lines 1-11, page 27 lines 16-25, page 51 line 6 through page 57 line 12 and Figures 1, 3 and 5);

accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value (see e.g., Present Specification at page 21 lines 9-30, page 22 lines 1-11, page 25 lines 17-30, page 26 lines 1-3 and Figure 3);

communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value (see e.g., Present Specification at page 9 lines 12-30, page 10 lines 1-20, page 18 lines 22-30, page 19 lines 1-18, page 55 lines 20-30, page 56 lines 1-21);

modifying, in response to the communication, at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one composite resource (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 38 line 8 through page 49 line 23, page 51 lines 6-30 and page 52 lines 1-9 (various examples which decrease demand for or increase capacity of composite resources) and Figures 9-18);

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

receiving a responding communication from at least one user binding the at least one composite resource with specified transaction parameter values (see e.g., Present Specification at page 18 lines 28-30, page 19 lines 2-18, page 24 lines 29-30, page 26 lines 1-2, page 57 lines 9-12);

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available (see e.g., Present Specification at page 51 line 20 through page 57 line 12);

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource is a human resource (see e.g., Present Specification at page 6 lines 1-24);

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (see e.g., Present Specification at page 3 line 26 through page 6 line 24);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user (see e.g., Present Specification at page 15 lines 5-9, page 20 lines 1-18, page 27 lines 16-25, page 55 lines 20-30, page 56 lines 1-2);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time (see e.g., Present Specification at page 20 lines 1-18, page 29 lines 18-30, page 31 lines 10-21, page 34 lines 14-30, page 35 lines 1-23);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability (see e.g., Present Specification at page 3 line 18 to page 7 line 5 (discussing distinguishing characteristics, with examples)); and,

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period (see e.g., Present Specification at page 15 lines 5-9, page 38 line 9 through page 41 line 8).

One embodiment of the present invention, as claimed in dependent claim 39, is the computer-readable medium of claim 34, wherein the method further comprises:

indicating when a demand for a composite resource exceeds a capacity of the composite resource (see e.g., Present Specification at page 25 lines 27-27); and

modifying, in response to the indicating of the demand for a composite resource exceeding capacity of the composite resource, at least one of the demand for that at least composite resource and the capacity of the at least one composite resource, the modifying including decreasing the demand for the composite resource and/or the increasing capacity of the composite resource (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 51 lines 6-30 and page 52 lines 1-9 (various examples which decrease demand for or increase capacity of composite resources) and Figures 9-18).

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

- I. Claims 31-40 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over the Hailpern et al. U.S. Patent No. 6,922,672 in view of the Dietrich et al. U.S. Patent No. 5,630,070.
- II. Claims 31, 32, 33, 34, 35, and 36-40 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378.

ARGUMENT

I. The Applicable Law

To anticipate a claim under 35 U.S.C. 102, a reference must teach every limitation of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 [2 USPQ2d 1051, 1053] (Fed. Cir. 1987) ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference"). *See also Atlas Power Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 [51 USPQ2d 1943, 1946] (Fed. Cir. 1999).

With regard to a 35 U.S.C. § 103 obviousness rejection: "Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case." M.P.E.P. 2141 (emphasis in the original). The Examiner bears the burden under 35 U.S.C. § 103 in establishing a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 [5 USPQ2d 1596, 1598] (Fed. Cir. 1988).

One criteria that must be satisfied to establish a *prima facie* case of obviousness is the reference or combined references must teach or suggest all of the claim limitations. *In re Royka*, 490 F.2d 981 [180 USPQ 580] (C.C.P.A. 1974).

However, "[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1731 [82 USPQ2d 1385, 1389] (2007). In making an obviousness determination over a combination of prior art references, it is "important to

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *Id.* at 1738 [1396].

In order to facilitate review of the determination of whether there was an apparent reason to combine known elements in the fashion claimed by the patent at issue, the “analysis should be made explicit.” *Id.* at 1738 [1396]. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 [78 USPQ2d 1329] (Fed. Cir. 2006) (cited with approval in *KSR*, 127 S. Ct. at 1738 [82 USPQ2d at 1396])

The test for obviousness under § 103 must take into consideration the invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 [227 USPQ 543, 551] (Fed. Cir. 1985). Furthermore, claims must be interpreted in light of the specification, claim language, other claims, and prosecution history. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568 [1 USPQ2d 1593, 1597] (Fed. Cir. 1987), *cert. denied*, 481 U.S. 1052 (1987). At the same time, a prior patent cited as a § 103 reference must be considered in its entirety, “*i.e.* as a *whole*, including portions that lead away from the invention.” *Id.* That is, the Examiner must recognize and consider not only the similarities, but also the critical differences between the claimed invention and the prior art as one of the factual inquiries pertinent to any obviousness inquiry under 35 U.S.C. § 103. *In re Bond*, 910 F.2d 831, 834 [15 USPQ2d 1566, 1568] (Fed. Cir. 1990) (emphasis added).

Furthermore, the Examiner must avoid hindsight. *Id.* “A fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.” *KSR*, 127 S. Ct. at 1739 [82 USPQ2d at 1397] (citing to *Graham v. John Deere*, 383 U.S. 1 [148 USPQ 459] (1966) in warning against a temptation to read into the prior art the teachings of the invention at issue and instructing courts to guard against slipping into the use of hindsight).

“[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.” *KSR*, 127 S. Ct. at 1737 [82 USPQ2d at 1395] (citing to *United States v. Adams*, 383 U.S. 39, 51-52 [148 USPQ 479] (1966)).

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

In conclusion, an Appellant is entitled to a patent grant if a *prima facie* case of obviousness is not established. The Federal Circuit has endorsed this view in stating: “If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the Appellant is entitled to grant of the patent.” In re Oetiker, 977 F.2d 1443, 1446 [24 USPQ2d 1443, 1448] (Fed. Cir. 1992).

II. Rejection of claims 31-40 under 35 U.S.C. § 103 (a) as being unpatentable over the Hailpern et al. U.S. Patent No. 6,922,672 in view of the Dietrich et al. U.S. Patent No. 5,630,070.

A. The Hailpern et al. U.S. Patent No. 6,922,672 does not teach or suggest the limitations of claims 31-40.

The Hailpern et al. Patent discloses a consumer product “push” promotion system enabled by a real-time evaluation of the geographic location of prospective consumers.

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 of **accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location, a service date and a service time.**

The Examiner does not contend that the Hailpern et al. Patent teaches a date parameter or a date and time parameter as being associated with a composite resource. However, while the Examiner does contend that the Hailpern et al. Patent teaches a service time parameter, the Appellant respectfully disagrees. The Examiner states at page 3 of the Present Final Office Action that “[t]he resource has associated therewith a service location and a time period for the transaction” citing “column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25, and 50-67, and column 4, lines 20-45.” However, none of these Hailpern et al. Patent citations specify the service availability time for a composite resource. The word “time” is only used at column 4, lines 20-45 and column 3, lines 1-5. Column 4, lines 20-45 references a “real-time customer monitor.” “Real-time” has nothing to do with a service availability time, but instead describes “the actual time that it takes a process to occur; ‘information is updated in real time’” (<http://wordnetweb.princeton.edu/perl/webwn?s=real%20time>). Column 3, lines 1-5 references a promotion expiration time. In the descriptive context of independent claims 31-

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

35, a promotion expiration time would be a “**duration** measure indicating a time after which the **promotion** is **unavailable**.” Examples of this duration measure would be “120” assuming a measurement descriptor of “minutes” or “4” assuming a measurement descriptor of “hours.” In contrast, independent claims 31-35 describe a “point or range measure” (not a duration measure) “indicating . . . when the service” (not the promotion) “is available” (not unavailable)(i.e., “wherein the at least one service date and time is a date and time point or range measure indicating a present or future first date and time when the service is available”) (see e.g., Present Specification at page 51 line 6 through page 57 line 7). Therefore, despite the Examiner’s contention, the Hailpern et al. Patent teaches nothing about specifying the service availability time for a transaction as disclosed in independent claims 31-35.

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value** wherein the **at least one composite resource** communicated is **related to the potential user’s at least one transaction parameter value** accepted.

The Examiner states at page 4 of the Present Final Office Action that Hailpern et al. discloses at “column 2, lines 27-36, column 3, lines 50-55, column 5, lines 1-6” that the “customer’s behavior and information is monitored via the computer system, wherein the information includes profile information, past buying history, etc.” Column 2, lines 27-36 of the Hailpern et al. Patent describes how a target group of customers is selected. Column 3, lines 50-55 describes when a customer of a target group is defined as active. Column 5, lines 1-6 of the Hailpern et al. Patent discloses that target groups have many different characteristics, each which can be separately evaluated. However, how a target group of customers is selected, when a customer is defined as active and how target group characteristics are evaluated does not create any “relationship” between the at least one transaction parameter value accepted from the user and the communicated portion of the transaction parameter values for at least one composite resource as defined, for example, in amended independent claim 31: “communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource **related to** the potential user’s at least one transaction parameter

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

value.” (see e.g., Present Specification at page 18 lines 22-30, page 19 lines 1-19). The Hailpern et al. Patent discloses a substantially different invention and corresponding embodiments from the subject matter claimed in independent claims 31-35, and therefore relies upon different and unrelated steps unique to its own invention from those steps disclosed in the present claims. Similarly, as a substantially different invention, the subject matter defined in independent claims 31-35 requires different and unrelated steps unique to the present claims which are not taught or suggested in the Hailpern et al. Patent.

As previously noted, the Hailpern et al. Patent also does not teach or suggest the limitations of independent claims 31-35 related to **wherein the at least one service date and time is a date and time point or range measure indicating a present or future first date and time when the service is available**. The Hailpern et al. Patent instead teaches a “**duration** measure indicating a time after which the **promotion** is **unavailable**.”

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time**.

The Examiner states at page 5 of the Present Final Office Action that Hailpern et al. “discusses capacity of a resource (i.e. good/service) at given periods of time” citing “column 2, lines 35-45 and 51-65 and column 4, lines 20-45.” However, column 2, lines 35-45 only uses the related word “overstocked” and phrase “stock is very low,” that is, under stocked. The terms “overstocked” and “under stocked” are references used in the field of supply or inventory management. Independent claims 31-35 only include this supply in the measure of capacity “if applicable,” and otherwise do not include it. The comparable words in the field of human-factor capacity measurement are “overstaffed” and “understaffed.” These terms are never used in the Hailpern et al. Patent which is directed to “stock” (i.e., supply or inventory), not staff (i.e., capacity).

Column 4, lines 20-45, does use both the terms “inventory” and “service capacity.” However, other references in the Hailpern et al. Patent show that the use of the term “service

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

capacity” is only considered as an additional constraining factor to the sale of product inventory. For example, claims 6, 16 and 18 of the Hailpern et al. Patent each reference “available service capacity to service sales for said plurality of goods.” For this reason, the Hailpern et al. Patent treats “service capacity” as a “store condition” (column 4, lines 28-30) or a change in the “operating environment” (e.g. claims 6, 16 and 18), that is, not associated with the “composite resource,” but instead with the “product location” (i.e., the store). Moreover, as previously noted, the Hailpern et al. Patent only discloses a time variable as a duration (i.e. 60 minutes) (and unrelated to capacity), rather than the date and time range measurement described to by independent claims 31-35. In summary, while the Hailpern et al. Patent provides absolutely no description of how it measures “capacity,” it is absolutely certain that it would not measure capacity in the manner disclosed at independent claims 31-35, which claims each measure capacity in ranges at the composite-resource-level rather than in durations at the store-level (see e.g., Present Specification at page 20 lines 1-18, page 29 lines 18-30, page 31 lines 10-21, page 34 lines 14-30, page 35 lines 1-23).

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability.**

The Examiner states at page 6 of the Present Final Office Action that Hailpern et al. “discusses service capacity, wherein service is performed by human resources” citing “column 2, lines 35-45 and 51-65 and column 4, lines 20-45.” This argument suffers from all of the defects previously stated above in relation to references (column 2, lines 35-45 not relevant), measures (point or range measures vs. duration measures) and level of measures (composite-resource-level vs. store-level). Further, the Examiner’s argument implies that there is no meaningful distinction between human resources and that therefore all human resources are human factor resources. Under the Examiner’s logic, an anesthesiologist billing \$1,000 per hour as one human factor resource comprising a composite resource identified as a cranial surgery is not meaningfully distinct from a grocery store stock clerk earning \$10 per hour who might shelve 2,000 products in an hour, each individual product is its own composite resource. In the former instance, the medical professional contributes substantial

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

economic value to a single composite resource. In the latter instance, the stock clerk contributes \$0.005 in economic value to a single composite resource. In embodiments of the invention defined in independent claims 31-35, the contribution of the grocery store stock clerk would be described as a “static ability” in the same manner as the Hailpern et al. Patent addresses “capacity.” These human resources are expressly excluded from the claim language measuring “an ability to produce and/or make available additional quantities of the at least one composite resource” under the invention defined in independent claims 31-35 (see e.g., Present Specification at page 3 line 18 through page 7 line 5 (discussing distinguishing characteristics)). In contrast, the Hailpern et al. Patent expressly indicates that it treats human resources merely as “an upper bound on the additional customers [a store] can handle at anytime.” See column 5 lines 30-31. The Hailpern et al. Patent therefore discloses that these human resources represent a “static ability” and it therefore does not attempt to modify capacity in any manner. The Hailpern et al. Patent teaches away from the unique aspect and capability of independent claims 31-35.

The Hailpern et al. Patent does not teach or suggest the limitations of independent claims 31-35 related to **wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period.**

The Examiner states at page 6 of the Present Final Office Action that Hailpern et al. teaches that “demand is discussed in terms of current (demand is low) and future (moving the item over time in a dynamic environment)” citing “column 2, lines 37-65.” The Appellant respectfully disagrees as there is no reference to “future” demand in the Hailpern et al. Patent. The Examiner’s citation merely discloses that “current” demand for the same product might be different at different measurement events. For example, the “current” demand for a baseball glove might be affected by seasonal variation, but the only demand ever considered by the Hailpern et al. Patent is the present-current demand, even in the instance of “volatile” demand. The present claims, in contrast and for example, describe a capability for measuring demand at 10:00 a.m. of a particular date for the date and time range measure of 6:00 p.m. to 8:00 p.m. of that same date or of a different, later date (see e.g., Present Specification at page

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

15 lines 5-9, page 38 line 9 through page 41 line 8). Moreover, just as with capacity, the Hailpern et al. Patent does not teach how to measure demand.

In addition, the Hailpern et al. Patent does not teach or suggest the limitations of independent claims 36-40 related to **wherein when the demand exceeds the capacity for the at least one composite resource, the modifying includes decreasing the demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource** (see e.g., Present Specification at page 4 lines 3-15 (describing hiring additional resources or changing their availability parameters), page 25 lines 17-30 and page 26 lines 1-3 (describing scheduling capacity-constraining resources in contiguous blocks to eliminate waste, thereby increasing reservable capacity), page 26 lines 12-23 (acceptance of a premium price for a limited-capacity resource), page 51 lines 6-30 and page 52 lines 1-9 (various premium-pricing strategies)).

The Examiner states at page 10 of the Present Final Office Action that the Hailpern et al. Patent is only addressed to market conditions where supply (which the Examiner incorrectly labels “capacity”) exceeds demand. While the Examiner still nonetheless contends that the Hailpern et al. Patent discloses or suggests the limitations of independent claims 36-40, stating that “column 2, lines 37-60” “discloses when demand is high, but there is low capacity/inventory,” the Appellant respectfully disagrees. Column 2, lines 37-60 reference both demand and supply (or capacity), but it never compares demand to supply (or capacity) as the Examiner implies, and therefore never considers when demand exceeds supply (or capacity). Rather, the Examiner is correct in its initial statement that the market conditions where “demand exceeds capacity” is simply not considered by the Hailpern et al. Patent. The Hailpern et al. Patent is not directed to having any operational utility under these market conditions.

B. The Dietrich et al. U.S. Patent No. 5,630,070 is not in the same field of invention as either the Hailpern et al. U.S. Patent No. 6,922,672 or the Present Invention

The Dietrich et al. Patent discloses a material requirements planning (“MRP”) system for the manufacture of semiconductor circuit devices.

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

The Examiner states at page 7 of the Present Final Office Action that the Dietrich et al. Patent is in the “restaurant supply chain management art.” However, the Dietrich et al. Patent is actually in the “manufacture of semiconductor circuit devices” art. Column 3, lines 6-7. It is in both a different industry and also within a different art category within that industry.

The Dietrich et al. Patent is in the field of constrained material requirements planning, i.e., “MRP”(“A method for constrained material requirements planning, optimal resource allocation, and production planning provides for an optimization of a manufacturing process by designating the amounts of various manufactured products to be produced” – see paragraph 1; and “This invention relates to methodology for optimization of manufacturing resource planning (MRP), including resource allocation and production planning, by linear programming and, more particularly, to optimization of MRP for a multiple level assembly process by use of an optimal resource allocation procedure to determine shipment and production schedules.” Column 1, Lines 5-11. In contrast, the Hailpern et al. Patent is in the field of “push” advertising systems (“The present invention relates generally to targeting promotions towards a group of customers. It specifically relates to real-time detection of the target group and adaptively selecting the promotion based on characteristics of the target group. . . . For traditional advertising and promotion . . .” – see Column 1, lines 5-13). The Dietrich application is not even in a remotely similar field of art to either the Hailpern et al. Patent or the present claims.

A flow diagram describing the relationship between the Dietrich and Hailpern et al. Patents is as follows: MRP System (i.e., Dietrich et al. Patent) >> Supply Chain Management System >> Inventory Management System (at the retail-store-level) >> Consumer Product Promotional Push Advertising System (i.e., Hailpern et al. Patent). As can be seen, the Dietrich and Hailpern et al. Patents are in two different fields of art separated by two additional fields of art. The Dietrich et al. Patent is two art-fields of separation from the Hailpern et al. Patent. Moreover, these various systems will nearly always be found in at least two different entities (i.e., a manufacturer and retail store), and often in at least three (i.e., a distributor).

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

C. The Dietrich et al. U.S. Patent No. 5,630,070 does not teach or suggest a date and time measure

The Examiner states at page 7 of the Present Final Office Action that the Dietrich et al. Patent discloses “the designation of a time frame for an inventory forecast including a specified start date and time and an end date and time,” citing “Abstract, col. 6, lines 26-50, col. 35, lines 18-67, and col. 36, lines 1-11.”

Assuming arguendo that they were in the same field of art, the Appellant respectfully submits that the Dietrich et al. Patent does not teach or suggest “the designation of a time frame for an inventory forecast including a specified start date and time and an end date and time.” The Abstract makes reference to “available time for use of resources such as tools,” but does not disclose how to measure the time frame. Col. 6, lines 26-50 references that “preparation cooking time is employed to incorporate the cheese” in its fictitious simplified example, but does not disclose how to measure the time frame. Col. 35, lines 18-67 reference “shipment revenue associated with shipping this order in each time period,” “the most profitable ship date for the order,” “the impact on the ship-dates of previously-accepted orders,” “the due date for the new order is set to the current date,” “previously-committed orders must be shipped on their respective due dates,” “the date at which the new order ships,” “the shipment date,” “daily capacity,” “daily material availability,” “daily release schedule” and “daily usage of capacity.” Col. 36, lines 1-11 reference “time periods set to a day or a shift rather than the usual planning duration of a week or a month.” As can be seen, the references the Examiner makes to cols. 35-36 disclose “daily” measures and “date” measures, and, at a theoretical lowest level of detail, “time periods” set to a “shift” (i.e., shift “27” would equal the 3rd shift of the 9th day of the fiscal year (on a three-shift schedule) or the 1st shift of the 14th day of the fiscal year (on a two-shift schedule)). Nowhere does the Dietrich et al. Patent teach or suggest that it measures “time frames” based on a start date and time and an end date and time as the present claims do (see e.g., Present Specification at page 51 line 6 through page 57 line 12). In fact, the Dietrich et al. Patent specifically states that the prior art to which it compares itself is “the usual planning duration of a week or a month.” Col. 36, lines 2-3. For the Dietrich et al. Patent, getting down to the “day” or the “shift” represents a substantial and useful improvement over the prior art. However, the Dietrich et al. Patent does not express even the most remote desire to the granularity of the hour or the

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

half-hour of a particular day. The Dietrich et al. Patent uses the word “time” 73 times and the word “date” 33 times, yet never places these two variables within the same context (i.e., “date and time”). In summary, the Dietrich et al. Patent neither addressed “date and time” values, nor would have it have considered them of any value to its invention.

D. Combining the Hailpern et al. U.S. Patent No. 6,922,672 and the Dietrich et al. U.S. Patent No. 5,630,070 does not create a valid obviousness rejection

As remarked above, the Appellant respectfully submits that the Hailpern et al. Patent does not teach or suggest all of the features of independent claims 31-35. The Appellant further respectfully submits that the Dietrich et al. Patent also does not cure the deficiency of the Hailpern et al. Patent. Therefore, even assuming *arguendo* that they were in the same field of prior art, a combination of the Hailpern et al. Patent with the Dietrich et al. Patent does not establish a *prima facie* case of obviousness because the combined references do not teach or suggest all of the limitations of independent claims 31-35.

Appellant respectfully further submits that there is no suggestion or motivation to combine the Hailpern et al. Patent with the Dietrich et al. Patent. The respective inventions are employed by different industry participants at least two degrees removed from each other in the chain from goods production to goods consumption, and therefore are in different fields of art. Taking either of these goods-related inventions and applying them to the service-related environment of the present claims is similarly not suggested by either of the two Patents. While it could be alleged that the Hailpern et al. Patent has language which both suggests and leads away from the present claims, this characterization would generously describe its invention because the “suggestions” are represented by few descriptive words and are not reduced to practice. The Examiner states at page 8 of the Present Final Office Action that “further motivation would have been to fill supply orders in a manner which maximizes profit and reduces on-hand inventory.” However, since the present claims are not directed to filling supply orders and on-hand inventory is often an inapplicable part of the measurements described in the present claims, these factors would not have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. The present claims solve vastly different problems from those articulated by the Hailpern et

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

al. Patent and the Dietrich et al. Patent. Therefore, motivation to combine based on the Examiner's cited conclusory rationale is absent.

The Examiner states at page 7 of the Present Final Office Action that "the designation of a time frame for an inventory forecast including a specified start date and time and an end date and time, is well known in the supply chain management art." While neither the Hailpern et al. Patent, the Dietrich et al. Patent nor the present invention are in the supply chain management art, measuring time frames using start dates and times and end dates and times is not well known in the supply chain management art or in any other field of art relating to an inventory forecast. Moreover, the present claims do attempt to forecast inventory, but instead attempt to measure capacity and demand. The Appellant respectfully further submits that constructing measurements using start dates and times and end dates and times is not well-known in the prior art. Measuring capacity and demand using the measures disclosed in the present claims is novel. This novelty is a direct function of the unique problems the present claims seek to solve, which problems do not arise (or at least have not been adequately addressed) in other fields of art (see e.g., Present Specification at page 4 lines 3-30, page 5 lines 1-4 (examples of unique characteristics), page 1 lines 20-30, page 2 lines 1-25, page 10 lines 29-30 and page 11 lines 1-6 (examples of unique problems)).

Additionally, constructing measurements using start dates and times and end dates and times would not create a reasonable expectation of success for either the Hailpern et al. Patent, the Dietrich et al. Patent or both in combination. Assuming, for example hourly records for a sixteen-hour day, the Dietrich et al. Patent would produce sixteen times the volume of production records with little, if any, incremental value, but at enormous storage and processing costs. The utility of the novel feature of the Hailpern et al. Patent, its real-time evaluation of the geographic location of prospective consumers, might be diminished if measurements using start dates and times and end dates and times supplanted measurements using durations. Other benefits could result which might overcome this diminished utility, but success is ultimately uncertain. The reduced value and uncertain success further demonstrates that a combination of the Hailpern et al. Patent with the Dietrich et al. Patent is nonobvious. Even assuming hindsight bias, which must be avoided, the Dietrich et al. Patent would likely have elected not to describe its invention differently and the Hailpern et al. Patent would likely have elected not to have described its primary embodiment any

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

differently, but may have considered amending its application to modify the description of its invention and to add additional claims to address a limited portion of the issues associated with the completely different problem resolved by the present claims. This would have required a completely different and nonobvious mindset from the primary intent of the described invention.

In view of the above, each independent claim 31-35 includes limitations which are not taught or suggested by the Hailpern et al. Patent, alone or in combination with the other cited references. In addition, dependent claim 36 further defines patentably distinct independent claim 31; dependent claim 37 further defines patentably distinct independent claim 32; dependent claim 38 further defines patentably distinct independent claim 33; dependent claim 39 further defines patentably distinct independent claim 34; and dependent claim 40 further defines patentably distinct independent claim 35. Therefore, these dependent claims are also believed to be allowable.

Therefore, Appellant respectfully requests that the above rejections of claims 31-40 under 35 U.S.C. § 103 be reversed and that these claims be allowed.

III. Provisional Rejection of claims 31, 32, 33, 34, 35, and 36-40 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Since the present application is the earlier filed application of these two pending applications, Appellant respectfully requests that if the above rejections are reversed that the provisional double patenting rejection to claims 31-40 based claims 2, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378 be withdrawn per M.P.E.P § 804 and claims 31-40 be allowed.

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

CONCLUSION

For the above reasons, Appellant respectfully submits that the cited references neither anticipate nor render obvious claims of the pending Application. The pending claims distinguish over the cited references, and therefore, Appellant respectfully submits that the rejections must be withdrawn, and respectfully requests the Examiner be reversed and claims 31-40 be allowed.

The Examiner is invited to contact the Appellant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Appeal Brief should be directed to Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

CLAIMS APPENDIX

1.-30. (Cancelled)

31. (Previously Presented) A computer-based method for capacity/demand management in human factor resource industries, comprising:

accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location, a service date and a service time;

accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value;

communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value;

modifying, in response to the communication; at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one composite resource;

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available;

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource;

wherein the at least one service provider resource is a human resource;

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource;

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user;

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability; and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period.

32. (Previously Presented) A computer-based capacity/demand management system in human factor resource industries, comprising:

means for accepting transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location, a service date and a service time;

means for accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value;

means for communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value;

means for modifying, in response to the communication; at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the means for modifying increases the demand for and/or decreases the capacity of the at least one composite resource;

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available;

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource;

wherein the at least one service provider resource is a human resource;

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource;

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user;

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability; and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period.

33. (Previously Presented) A capacity/demand management system comprising:

a storage device storing a program; and

at least one processor connected to the storage device and controlled by the program, the at least one processor operative with the program to accept transaction parameter values for composite resources in human factor resources industries, wherein each composite resource has associated therewith at least a service location, a service date and a service time, to accept from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value, to communicate to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value, and to modify in response to the communication at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

resource, the modifying increases the demand for and/or decrease the capacity of the at least one composite resource;

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available;

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource;

wherein the at least one service provider resource is a human resource;

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource;

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user;

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability; and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period.

34. (Previously Presented) A computer-readable medium containing program instructions for controlling a computer to perform a method comprising:

accepting transaction parameter values related to individual resources and associated composite resources, wherein the associated composite resources each include a collection of at least two of the individual resources, wherein the associated composite resources each have associated therewith at least a service location, a service date and a service time;

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

storing the data related to the individual resources and the associated composite resources;

constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources;

indicating when a capacity of a composite resource exceeds a demand for the composite resource;

modifying, in response to the indicating of the capacity of a composite resource exceeding the demand for the composite resource, at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, the modifying including increasing the demand for the composite resource and/or decreasing the capacity of the composite resource;

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available;

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource;

wherein the at least one service provider resource is a human resource;

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource;

wherein the indication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user;

wherein the capacity of a composite resource is a measure of the on-hand supply and/or availability, if applicable, of the composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the composite resource over a first date and time period beginning at the first date and time and ending at a second date and time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability; and,

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the demand for a composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the composite resource over the first date and time period.

35. (Previously Presented) A computer-based method for producing composite resource transactions, the method comprising:

accepting, via computer, transaction parameter values for composite resources in human factor resource industries, wherein each composite resource has associated therewith at least a service location, a service date and a service time;

accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value;

communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource related to the potential user's at least one transaction parameter value;;

modifying, in response to the communication, at least one of a demand for the at least one composite resource and a capacity of the at least one composite resource, wherein when the capacity exceeds the demand for the at least one composite resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one composite resource;

receiving a responding communication from at least one user binding the at least one composite resource with specified transaction parameter values;

wherein the at least one service date and service time is a date and time point or range measure indicating a present or future first date and time when the service is available;

wherein the service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource;

wherein the at least one service provider resource is a human resource;

wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource;

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized composite resources to the at least one potential user;

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time;

wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time is derived from at least one human factor resource and is not a static ability; and,

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and time period.

36. (Previously Presented) The method of claim 31 wherein, when the demand exceeds the capacity for the at least one composite resource, the modifying includes decreasing the demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource.

37. (Previously Presented) The system of claim 32 wherein, when the demand exceeds the capacity for the at least one composite resource, the means for modifying decreases the demand for the at least one composite resource and/or increases the capacity of the at least one composite resource.

38. (Previously Presented) The system of claim 33 wherein, when the demand exceeds the capacity for the at least one composite resource, the modifying decreases the demand for the at least one composite resource and/or increases the capacity of the at least one composite resource.

39. (Previously Presented) The computer-readable medium of claim 34, wherein the method further comprises:

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

indicating when a demand for a composite resource exceeds a capacity of the composite resource; and

modifying, in response to the indicating of the demand for a composite resource exceeding capacity of the composite resource, at least one of the demand for that at least composite resource and the capacity of the at least one composite resource, the modifying including decreasing the demand for the composite resource and/or the increasing capacity of the composite resource.

40. (Previously Presented) The method of claim 35 wherein, when the demand exceeds the capacity for the at least one composite resource, the modifying includes decreasing the demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource.

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-
FACTOR RESOURCE INDUSTRY

EVIDENCE APPENDIX

[None]

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-
FACTOR RESOURCE INDUSTRY

RELATED PROCEEDINGS APPENDIX

[None]